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**FILED**  
07/10/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41Q-0113-I-2023  
Stern, Anika  
4.00

MONTANA WATER COURT, UPPER MISSOURI DIVISION  
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

\* \* \* \* \*

CLAIMANT: John J. McInerney

**CASE 41Q-0113-I-2023**

41Q 30123177

41Q 30123178

41Q 30123179

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. John J. McInerney is the record owner of stock claims 41Q 30123177, 41Q 30123178, and 41Q 30123179.

2. Claims 41Q 30123177, 41Q 30123178, and 41Q 30123179 were decreed with DNRC issue remarks:

**Claims 41Q 30123177 and 41Q 30123178:**

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

THE PRIORITY DATE MAY BE QUESTIONABLE. IT APPEARS WATER FROM THE SOURCE WAS FIRST USED IN 1903.

**Claim 41Q 30123179:**

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

THE CLAIMED PRIORITY DATE IS QUESTIONABLE. IT APPEARS WATER FROM THE SOURCE WAS FIRST USED IN 1904.

3. The first-listed issue remark on each claim is a notice-type remark and does not require further attention.

4. During DNRC examination of claims 41Q 30123177, 41Q 30123178, and 41Q 30123179, the examiner made notes in each claim file. The notes in each file were similar and resulted in the second-listed issue remarks being placed on the claims. For example, the notes on the examination worksheet in claim file 41Q 30123177 state:

The person who completed this Statement of Claim, Pat Riley, submitted pages 6 through 8 of the Cascade County Water Resources Survey (WRS). Mr. Riley did not indicate anything specific on the WRS pages to support the claimed 12-31-1887 priority date, so after looking through the pages, I assume the 2<sup>nd</sup> sentence in the last paragraph on page 6 that essentially states, "... the Great Falls Water Power and Town Site Company was incorporated in 1887, the same year as the arrival of the Great Northern Railway," is being used to substantiate the claimed date of first use. However, other stock claims in this area have 1903 priority dates for the same source. (continued below)

Examined by: Timberly Brown Date: 8-28-2020  
Addendums: RMK RSRV POU DVRS OWNR AMEND SUPP

Continued:

In addition, the attached BLM General Land Patent records show that MARGARET E. JOYCE was issued a patent in 1903 and it appears this patent is the proof of use for stock claims 41Q- 209306, -209307, -209309, and -209427 in this area (see attached copies of patent from these claim files).

The notes on the examination worksheets for claims 41Q 30123178 and 41Q 30123179 are similar and point to the land patent appurtenant to the places of use.

5. A deadline was set for Claimant John McInerney to agree or disagree with changing the deadline for the claims in this Case to April 8, 1903.

6. On May 31, 2023, Claimant John McInerney filed a Motion to Amend the priority date of the claims in this Case from December 31, 1887 to April 8, 1903.

7. An Order was issued on June 2, 2023 setting a deadline specific to claim 41Q 30123179, explaining that upon reviewing the record again, this Water Master determine claim 41Q 30123179 is based on a *different* land patent also filed by Margaret C. Joyce:



MTMTAA.006254	[P] JOYCE, MARGARET C	12/31/1904	5390	MT	Montana PM	015N - 007E	W1/4NE1/4	28	Cascade
						015N - 007E	SE1/4NE1/4	28	Cascade
						015N - 007E	NW1/4SE1/4	28	Cascade
MTMTAA.006238	[P] JOYCE, MARGARET E	4/8/1903	5054	MT	Montana PM	015N - 007E	E1/4SE1/4	21	Cascade
						015N - 007E	NW1/4SW1/4	22	Cascade
						015N - 007E	NE1/4NE1/4	28	Cascade

the priority date for claim 41Q 30123179 ought to be December 31, 1904 – not April 8, 1903. The Order Setting Filing Deadline indicated that if nothing were filed by the June 23, 2023 deadline, this Water Master would conclude that John McInerney agrees the priority date for claim 41Q 30123179 should be December 31, 1904. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim. Sections 85-2-247 and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right

claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The notice-type issue remark decreed on the claims in this Case has served its purpose. As no objections were filed, no further proceedings are required.

#### RECOMMENDATIONS

1. The priority date of claims 41Q 30123177 and 41Q 30123178 should be changed to April 8, 1903. The priority date for claim 41Q 30123179 should be changed to December 31, 1904.

2. The issue remarks should be removed from claims 41Q 30123177, 41Q 30123178, and 41Q 30123179.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

John J. McInerney  
4200 Lower River Rd.  
Great Falls, MT 59405

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, FROM SUN TO MARIAS RIVERS**  
**BASIN 41Q**

**Water Right Number:** 41Q 30123177 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN J MCINERNEY  
4200 LOWER RIVER RD  
GREAT FALLS, MT 59405 8200

**Priority Date:** APRIL 8, 1903

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF TILLINGHAST CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2N2SE	21	15N	7E	CASCADE
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		N2N2S2SE	21	15N	7E	CASCADE
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b>	JANUARY 1 TO DECEMBER 31					

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2N2SE	21	15N	7E	CASCADE
2			N2N2S2SE	21	15N	7E	CASCADE

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, FROM SUN TO MARIAS RIVERS**  
**BASIN 41Q**

**Water Right Number:** 41Q 30123178 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN J MCINERNEY  
4200 LOWER RIVER RD  
GREAT FALLS, MT 59405 8200

**Priority Date:** APRIL 8, 1903

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

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**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2SE	21	15N	7E	CASCADE

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2	8	E2SESW	21	15N	7E	CASCADE
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2SE	21	15N	7E	CASCADE
2		8	E2SESW	21	15N	7E	CASCADE

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, FROM SUN TO MARIAS RIVERS**  
**BASIN 41Q**

**Water Right Number:** 41Q 30123179 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN J MCINERNEY  
4200 LOWER RIVER RD  
GREAT FALLS, MT 59405 8200

**Priority Date:** DECEMBER 31, 1904

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2N2NWNE	28	15N	7E	CASCADE

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2N2NWNE	28	15N	7E	CASCADE